

Washington's Parole System Summarized

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Introduction

Washington operates multiple criminal sentencing schemes as the century turns.

Misdemeanors and Gross Misdemeanors, historically those offenses punishable by jail and other sanctions less than prison, are dealt with by Municipal and District Courts.

For much of the century felonies, those crimes punishable by imprisonment, were sanctioned with sentences subject to an inmate's earning parole with demonstrated good behavior and rehabilitation.

In the mid 1980's felony sentences were made determinate at the time of sentencing on a theory of proportionality, equality and justice exemplified by pursuit of similar times for similar crimes.

A quasi-criminal sentence is applied to sex offenders that are deemed to be predators. Upon completion of the criminal sentence such offenders may be civilly committed for compulsory treatment under the Department of Social and Health Services (DSHS) instead of the Department of Corrections (DOC).

Certain sex offenders, committing their crimes after September 1, 2001, are given a "determinate plus" sentence.

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The Indeterminate Sentence

Prior to the effective date of the Sentencing Reform Act locally elected Superior Court Judges had broad discretion when making sentences for felony crimes committed before July, 1984. If probation by a deferred or suspended sentence was not granted the Judge sentenced the offender to prison for a maximum term; 5 years for a "C" felony, 10 years for a "B" felony and 20 years to Life for "A" felonies.

The Judge and prosecutor might make minimum term recommendations and in some cases, usually involving special statutory provisions about weapons use, the Judge set a mandatory or minimum term. The Board of Prison Terms and Paroles, predecessor of the Indeterminate Sentence Review Board (ISRB), would otherwise set the minimum term to be served.

An inmate could, with good behavior, earn up to 1/3 of the sentence deducted from the term. Often misunderstood, this "good time" is a control tool for management within the institution and protection for corrections staff. Blocks of "good time" are taken for misbehavior. This calculation establishes a date for review of parolability. (Parole Eligibility Review Date, PERD).

For crimes committed after July, 1984, the sentencing Judge's discretion is bound by the Sentencing Reform Act (SRA) and the ISRB does not have jurisdiction. A prosecutor's charging decision, based on the elements of proof necessary for conviction, is the primary determinate, with the criminal record, of what the sentence will be.

Over the past 16 years a number of changes have been made in the SRA and what has evolved is a system of mandatory release on a particular date set at the time of sentencing. The post-incarceration parts of the sentence have been called community supervision, community placement and now, community custody.

ISRB cases, by contrast, require a judgement and decision about rehabilitation and fitness for release at the anticipated time of return to the community. In fact the Board is specifically charged not to release an inmate on parole prior to the expiration of his/her maximum term unless satisfied of his/her rehabilitation and fitness for release (RCW 9.95.100).

Court decisions and legislative initiatives since the adoption of the SRA have brought the two systems into rough parallel.

The SRA became Washington law in the 1980's when a greater degree of certainty about criminal sentencing was sought. "Proportionality, equality and justice" were pursued by standard range sentences being required of Judges statewide. The Board was also required to set sentences reasonably consistent with SRA purposes, standards and ranges (RCW 9.95.009(2)). Departure from the ranges by both Judges and the Board was guided by enumerated aggravating or mitigating circumstances (RCW 9.94A.390).

In a series of reviews and hearings in the late 1980's and early 1990's, the ISRB brought presumptive sentences of those remaining under its jurisdiction into some consistency with the SRA ranges. These decisions were concerned with proportionality and weighed aggravating and mitigating factors in the offender's

actual criminal conduct. Newly recognized defenses such as murder in response to abuse or battering were also considered. Thus sentences with a degree of certainty and an anticipated Parole Eligibility Review Date (PERD) resulted.

These proceedings and dates were and remain entirely separate from the determination of rehabilitation and fitness for release made at a parolability hearing (also called a .100 hearing).

As outlined subsequently, an inmate who has served a "proportionate" sentence for his criminal conduct may still, at the time of consideration for the privilege of parole constitute an unacceptable risk to the community and be found not parolable. A new minimum term is set following the hearing.

Here is a hypothetical sentence course for illustration:

Murderer began his sentence in the summer of 1984 and the maximum expiration of his sentence is Life. Both the Judge and prosecutor recommended Life.

Standard range under the SRA is 240 to 320 months.

The Board set a term half again as high as the top of the standard range.

1986, In Re Obert Myer (offender with 3 to 9 month standard range was given 48 month term). The Court found that sentences were to be reasonably consistent with the purposes, standards and ranges of the SRA (RCW 9.95.009(2)) and that:

- "The Board abuses its discretion by setting a minimum prison term after July 1, 1984, which is significantly outside the statutory presumptive range without setting forth adequate reasons for the departure in the record."

The Court also noted that a factor taken into account in establishing the presumptive sentence range cannot be used to justify departing from the range.

Late 1980's, early 1990's, absent Court-recognized aggravating factors and considering possible newly recognized defense, the sentence was amended into the standard range and about 2/3 of the newly determined sentence would be served by the summer of 1998. This 2/3 mark (1/3 "good time") is the Parole Eligibility Review Date (PERD). This process, like the SRA itself, was not based upon rehabilitation or fitness for release.

1995 hearing about three years in advance of the PERD to consider suitability for a Mutual Agreement Plan (MAP). Elsewhere discussed, a MAP is a one to three year course of graduated steps leading to consideration for actual parole. The agreement is between Department of Corrections, the inmate and Board and all murderers must proceed through the process. The decision involves consideration of rehabilitation and fitness for a "conditional" parole to the MAP. If not fit, no change in time and the next hearing will be 120 days before the PERD.

1998, Inmate is paroled for three years of supervision in the community with geographic restrictions and reporting requirements and other limitations upon activities and associations. This decision is based on rehabilitation and fitness for release and, if not, a new minimum term is set and thus, a future PERD determined MAP consideration and/or .100 hearing.

2001, Parolee is granted a Final Discharge and Restoration of Civil Rights. At any time during the period of parole, a violation could result in revocation and re-

imprisonment to repeat the above process and serve for life unless found parolable again.

This year, 2000, about half a million people will leave prison and return to neighborhoods across the country. Fewer than 170,000 were released in 1980. There are about 90,000 community corrections cases in Washington, about 60,000 under active supervision.

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Indeterminate Sentence Review Board

Our mandate is the protection of the public and the actual, regular exercise of our discretion per court cases. We are accountable to the public as a Board for our required opinion about the rehabilitation of the offenders under our jurisdiction, about a thousand in the Fall of 2000, mostly murderers and rapists.

We are guided, but not bound by, the SRA which discarded rehabilitation as the objective in sentencing and embraced "proportionality, equality and justice" as bases for establishing standard ranges of incarceration for particular crimes. The SRA and case law set forth parameters for departure from the standard ranges.

Offenders under Board jurisdiction have certain court recognized "liberty interests" constitutionally protected from ex-post-facto laws and abuses of discretion (failure to exercise discretion is an abuse). Though not entitled to the full panoply of due process rights, an offender has, in addition to the foregoing protections, rights to Notice and Discovery and an opportunity to be heard and the right to Board compliance with its own procedure and statute. While there is no right to release for those under Board jurisdiction prior to service of the maximum term, refusal to grant parole must be measured as above and set forth with clarity.

By granting parole the Board, essentially, certifies an offender to once again be our neighbor in the community. The Board thus remains behavior-focused in making individual risk assessments.

As the SRA is offense-focused and weighs only pre-offense criminal history, so the Board also looks initially at the offense...the "work-product" of the particular mind, but considers the behavior demonstrated the entire history of the offender. This "work-product" analogy has also been stated as taking care to examine a painter's work before trying to understand the painter.

The techniques used are similar to those of law enforcement in detection and/or determining if multiple crimes are the work of a single mind. In behavioral terms neither murders nor rapes are all alike, even though several typologies have been defined for each of these and for other crimes. Pre and post crime behavior, as well as that during the actual perpetration, needs close analysis.

Institutional performance and testing can flesh out an appraisal. Self-report is the least reliable source of data, so any information relying, at its core, on self-report must be weighed carefully.

This caveat naturally applies during the interview when the offender's ability to candidly describe his conduct in factual terms is significant in determining if an initial step has actually been made toward rehabilitation. This is analogous to the candor historically expected in religious confession and modernly in "12 Step" programs and the use of polygraphs in preliminary employment screening by some public and private employers.

Though behavior/rehabilitation oriented, the Board considers the "just deserts" models of the SRA ranges for proportionality. The Board in making a parole decision, however, is making a future public safety risk assessment. Behavior modification is directly related to the degree of external control and parole is exactly a reduction in that control and reliance upon the offender. These concepts are hard to reconcile and some regard them as diametrically opposed.

The Board weighs victim concerns carefully, as avoidance of further victims is precisely the mission. Proper analysis of the offender can give an indication of especially vulnerable potential victims and the times and places risk will be particularly high.

An offender may be directed to special areas of concern by the Board, but this is not a prescription. This parallels the SRA mandate to provide opportunities for an offender to work to reform. In behavioral terms, however, mere completion of a list of programs means no more than compliance with external controls. Internal self-regulation is what is sought and objective manifestations are the measure. Interestingly, research has shown that often the most sophisticated, hard-to-apprehend, committed criminal may be the model prisoner.

The best measure of what a person will do remains what they have done and most offenders under Board jurisdiction have attacked another person(s). Your Board is committed to finding and identifying actual reform and rehabilitation.

Degree of risk considerations also enter Board determinations. The least restrictive, most economic housing and supervision commensurate with public safety is always before the Board. For example, the cost of annual maximum-security bed-space must be balanced against the potential costs to the new victim, police costs in detection and apprehension, court costs in resolving the new case and then the re-imposition of incarceration costs.

These equations are particularly acute when considering the capacities of a geriatric offender. The risk to an aged parent in the middle of the night in a nursing home bed next to an elderly "con-wise" murderer is troubling, as is the risk posed by an older child-molester in single parent housing with access to youngsters.

Time, place and vulnerability of potential victims are the very essence of "Public Safety"

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Parole

The Sentencing Reform Act (SRA) became effective in the summer of 1984 and reform and return to the community were left to the offender. The Indeterminate

Sentence Review Board has continuing jurisdiction over those offenders committing crimes before July, 1984. The Board has reduced the number of these offenders with parole and supervised return to the community.

Over half of the incarcerated offenders remaining under Board jurisdiction have been paroled one or more times and been revoked, some several times. A few have not yet been seen by the Board as they are completing minimum mandatory or judge-set minimum terms before reaching their PERD (Parole Eligibility Review Date). It is worth noting that sentence start times may be several years after the 1984 effective date of the SRA. Failure of probation or treatment programs, late-discovered crimes and absconding from prosecution account for most of these.

An offender's case is surveyed about every 24 months in an administrative progress review, which is a consideration of the file and any recent data.

Parolability or .100 hearings are scheduled 120 days prior to the PERD to allow completion of a parole plan for those deemed parolable and thus avoid the waste of a paroled offender remaining incarcerated past the PERD.

A parolee is under supervision in the community by a CCO (Community Corrections Officer) of the DOC (Department of Corrections) for 36 months before a discharge from supervision is granted via a Final Discharge and Restoration of Civil Rights.

Parole has been defined in many ways over time. One thing it is not is a "reward" to the offender. Your Board regards parole as a means for transition of an offender back into the community and finally out of the criminal justice system. A parolee does, however, constitute a qualified risk to the community, hence the supervision and conditions. Broadly speaking, parole is a right of the community and a privilege for the offender.

The expertise and diligence of a professional CCO is a major determinant of a successful parole. The Board encourages realistic, clear and appropriate conditions to assist the parolee's transition and to guide the CCO's supervision.

Setting the conditions is a cooperative process as the plan of residence, treatment, employment and community support is prepared and submitted by DOC field staff to the Board for approval. If impossible conditions are set, there is no point in the parole. Similarly, conditions that fail to address needs will virtually guarantee failure.

The offender agrees to the conditions (interestingly, the rare offender simply refuses to sign and remains incarcerated) and non-compliance with any condition can result in revocation, return to the institution and setting of a new minimum term.

Revocation and re-incarceration is the last, but fortunately, not the only resort. An alert CCO may simply admonish the parolee or clarify a condition. Additional conditions may be added by Board addendum. A Notice of Violation may result in issuance of a Board warning or administrative reinstatement or suspension. Either the Board or the CCO may initiate a suspension of parole.

A suspended parole means the parolee is arrested and if probable cause is confirmed a revocation or "on-site" hearing is scheduled. A Board Member hears evidence and makes a finding. If guilty the question becomes the appropriate disposition. Here again there is a range of options from reinstatement to revocation.

Presently the full Board considers the disposition in order to assure uniformity and consistency.

The Board is behavior focused and will, therefore, revisit the underlying crime behavior when considering the disposition. Your Board is committed to successful parole transition and exercises care to distinguish behavior that is a misstep from that which is a significant relapse into offense-prone behavior.

A parolee is being compelled to make a major change from the controlled atmosphere of an institution into the community. The very duration of institutionalization may cause adjustment difficulties and close initial supervision and understanding are required. The parolee must continue to earn the privilege, however, as the public has a right to safety.

In its simplest terms, parole mandates a parolee to build a stake in the community with a job, an appropriate residence and a break with criminal associates. The assistance provided by careful supervision and clear expectations should be obvious to anyone who has tried to diet or quit a substance habit or known someone who has.

A significant group of ISRB offenders will be reaching their maximum expiration dates within two or three years, around 2004. The Board is especially alert to opportunities for transition of these offenders. The community has a right to their controlled and supervised re-entry, when possible, after a duration of confinement which, itself, will complicate adjustment to life "outside". Another significant group have life sentences unless paroled.

The Board actively seeks out victim/survivors and assists with their participation in the parole process. The option to participate is theirs and a web-site and regular press releases are means intended to broadcast the availability of this option.

For the Board, as for the victim, each crime is unique in the behavior of the offender and in the loss/harm suffered by the victim(s). The equation is somewhat analogous with the civil law of Torts in that the tortfeasor/offender is responsible for the victim as found and thus for the individual harm suffered from the offender's act of will.

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Two Systems

Here is an example of the combined effect of the determinate and indeterminate systems as applied to a single offender.

An offender approaches the end of a 96-month SRA sentence for Second Degree Rape committed in the winter of 1990. He will actually have served 84 months (96 less 15% present "good time") plus 17 months for revocation of parole, a total of 101 months.

The offender was on parole in 1990 after serving 176 months (240 less than extant 1/3 "good time") for Kidnap and Robbery committed in the spring of 1975. SRA ranges, had they been applicable, were 53 to 71 months and 32 to 44 months

respectively. Statutory sentences were 20 years to life for the kidnap and 20 years for the robbery. The sentencing judge made no duration recommendation and the prosecutor recommended 20 years (240 months).

For the 1990 Rape, the offender's parole was revoked and, after 17 months, he was "paroled" to begin serving the SRA 96-month sentence. Reasons stated by the Board were "...to facilitate transition as well as to make Board decisions reasonably consistent with the SRA" and factors considered included:

1. SRA ranges on all ISRB causes;
2. Original recommendations of the judge and prosecutor;
3. Amount of time already served on indeterminate cause, including at least 12 months for the new felony;
4. Amount of time imposed for the consecutive SRA conviction.

At no time since was the offender "in the community" or otherwise released from the confines of a state correctional facility.

36 months after his "parole" to the SRA sentence a Final Discharge and Restoration of Civil Rights was prematurely issued to the offender. This Final Discharge was rescinded last year, the Board noting that the 36 months were to be "in the community".

Victim/survivors are involved by information and conditions of supervision can be made to address victim/survivor concerns. For example, geographic restrictions may be imposed.

For the offender above a violation of any condition of parole could subject him to re-incarceration for up to life, the maximum expiration of the Kidnap sentence.

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Victim/Survivor Considerations

For the Board the victim/survivor is a neighbor with a name and an ongoing close concern with the parole decision.

Your Board intends that victim/survivor rights correspond with those assured the offender, such as Notice, Discovery, an opportunity to be heard and a forthright explanation of Board procedure and governing law. Decisions should be clear to both the offender and the victim/survivor.

"Victim/survivor" is a broad term and includes those suffering the direct personal invasion, their family and intimates and, not infrequently, the family and intimates of the offender. Sadly, of course, they are often the same. Each crime has an impact on a number of people over time and creates relations around the offender, even involuntarily.

Child molestation by a relative and assaults and killings within the family are only the most obvious examples of relations. Almost all crimes against persons involve some sort of ruse by the attacker to get close. Asking the time or directions from a robbery target, picking up a hitch-hiker or stranded motorist, frequenting school-child paths and simply observing the household comings and goings of intended victims are some of the methods attackers use to protect themselves and isolate and control their victims.

These are axiomatic observations offered to illustrate a fundamental tenet of Board communication with victim/survivors:

- IT WAS NOT YOUR FAULT

Emphasis is necessary because child victims often feel guilty and even adults are prone to "if only...." speculations. The desire for the crime not to have happened perhaps combines with trial defense efforts to impose or suggest a feeling of responsibility on some victim/survivors.

The Board is aware of this unhappy phenomenon and guards against any appearance or feeling of judgement. Risk assessments can be aided by what must be termed "victimology" but this should never be taken as any sort of imputation of responsibility. The victim/survivor can provide insights into and details of the attack as well as an appreciation of the loss or harm suffered. Sensitivity and empathy are of paramount importance as the very fact of consideration for parole may be upsetting.

The Board maintains this web-site and publishes a monthly press release to broadcast potential considerations for parole about 90 days prior to the anticipated hearing. A victim specialist is employed part-time by the Board to identify, locate and contact victim survivors and inform them of their right to participate in the decision process and to be kept informed.

Submittals from all categories of victim/survivors are regularly received by the Board. All are acknowledged and considered. In-person presentations are made and the Board tries to accommodate any reasonable request for its attention. Availability at sites other than the Lacey office and use of an "800" number can reduce the financial/travel burden, as can the use of audio and videotape presentations.

There are limitations on the degree of confidentiality which can be assured a victim/survivor and these are explained. The law will not permit an offender to be kept for "secret reasons" and the source and nature of reasons considered must be at least summarized for the offender and his counsel. Similarly, there are portions of data concerning an offender, which the law requires to be kept confidential.

Subject to these limitations, the file and the hearing and decision process are fully discussed with victim/survivors. These discussions are also conducted for the family and intimates of the offender.

The Board avoids assumptions about the needs or wishes of victim/survivors and encourages their suggestions and opinions. Risk assessment is a developing art and the offender has a complete history before the crime, during incarceration and for at least the potential three years of supervision in the community. Each of these periods involves those even involuntarily connected to the offender.

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Some Special Categories

The privilege of parole can be earned as outlined and the transition may include lessening degrees of custody through pre-release and work-release facilities within the community. Continuing treatment as a parole condition may have a secondary desired affect of socialization of the ex-inmate.

For criminal sentencing to accord with the rule of law, sanctions should be related to corrections objectives and/or criminogenic needs. Incapacitation is appropriate for a violent offender and treatment and monitoring for a substance abuser. Combinations, of course, are usually required as human beings are more various.

Your Board weighs the needs and risks of individuals, acknowledging their inherent complexity. The Board is bound by statute to consider factors besides the crime of conviction and criminal history.

RCW 9.95.100....

- The Board shall not, however, until his maximum term expires, release a prisoner, unless in its opinion his rehabilitation has been complete and he is a fit subject for release. (Emphasis supplied).

These murder examples will illustrate some of the variety of behavior in a crime:

The victim, a convenience store clerk, was shot in the head as he knelt following the robber/killer's orders. Another killer came from out-of-state, armed locally and killed the stranger victim on directions of a third person. Yet another victim who had been in an argument earlier with the killer was then murdered in the parking lot. A fourth killer decided the victim was involved in a crooked financial scheme and ambushed him.

Reduction to classification only by the elements of proof, premeditation and intent, ignores the complexities of human nature demonstrated by each of these killers. For the Board, they have each committed a unique crime. These few examples are considerable simplifications and sex offenders exhibit an even more infinite variety of behaviors.

This being noted, it is a fact that most offenders will eventually return to the community and the Board tries to systematize by categories in order to bring fairness and predictability to the parole process commensurate with the primary concern for public safety.

Among the special categories of offender are those with serious mental health (MH) concerns requiring particular residence and medication monitoring.

Parole is a transition involving proscribed behavior, required actions and degrees of monitoring and supervision with the objective of helping restore the "ex" offender to the community. Lack of capacity for self-control by those classed MH is a hard problem to accommodate within the criminal context, but cannot be ignored.

Sex offenders constitute another especially complicated category of chronic behavior risk. No treatments have been proven effective as "cures". Teaching management and control techniques through "cognitive-behavioral" courses seems

to show some promise presently. Parolee financial constraints prohibit the Board from requiring private community therapy courses as conditions of parole. Polygraph monitoring and "Phase III" community follow-up to the Sex Offender Treatment Program (SOTP) in the institution is available. Dependence on the will of the sex offender is probably the most inherently risky of parole decisions.

Murderers may only earn the privilege of parole via a Mutual Agreement Plan (MAP), involving a "conditional" parole to a MAP in which the offender and Department of Corrections (DOC) agree, prepare and complete specific programs and steps leading to a review by the Board for the final parole decision after a two or three year progression.

Though not strictly contractual, MAPs require agreement between the Board and the DOC and may become appropriate for consideration as the offender enters an approximate three-year "window" before tentative release date. Expectations are created so considerable care is required.

Another category involves the aged offender who retains the capacity to act sexually or violently and correspondingly may have "less to lose" as a restraint on behavior and may even prefer the security of the institution. Financial considerations become particularly acute with this category.

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Rape Typologies

Board analysis of criminal behavior requires the adoption or appreciation of the offender's viewpoint. We must be open to thinking the unthinkable...to understanding the world from the offender's perspective. A classic example for illustration is that of the serial killer, Bundy, whose victims bore physically obvious but to Bundy only superficial similarity. The race, gender, age and hairstyle were not, to Bundy, as significant as their middle-class status and presumed intelligence. He attacked what were to him "worthy victims", young women who could be expected to resist and would require cunning and subterfuge to entrap and overcome.

Two of four phases of sexual crime are thus suggested; (1) Antecedent behavior and (2) Victim selection. Discovering the motivation and deconstructing the behavior can reveal the fantasy which the offender, however consciously, uses as a screening or organizing bridge to accomplish his objective. However brief or elaborate, these phases can be a "tell" of the offender's mind set demonstrated in his "work product" and are baselines in appraising his future risk or rehabilitation.

(3) Commission of the crime itself presents an objective behavioral picture of the offender's psyche and careful file review and experience provide a foundation for the interview. This is the "painter's painting"....what he does.

(4) Post offense behavior also points to the fantasies and perceptions of the offender. Some rapists exhibit contrition in one form or another, even to their victim. This may only be disappointment that reality did not match fantasy and it's important to note here the analogy with an alcoholic who may repeatedly swear off

drinking after every hangover. Other rapists may take special post crime steps to degrade their victims.

The Board has the inmate available for interview and considers far more than the elements of proof in evaluating the offender's behavior. An inmate's life is essentially an artificial construct. An offender's unconstrained behavior when at large is the Board's point of departure.

Sexual offenders can be considered in two broad categories; (1) Impulsive and (2) Ritualistic.

As the label implies, the impulsive rapist is the less intelligent and his motivation will be power, anger or some combination. This rapist, typically, will have a minimal fantasy life, two dimensional and simplistic, and little specificity to his victim selection. Antecedent behavior will often involve alcohol and/or drugs and he will use high and severe levels of violence. His purpose is obtaining and keeping control of his victim and sex is secondary. It too will be violent and degrading with minimal verbalization.

The impulsive rapist's criminal history usually reflects a general antisocial bent rather than a narrow specific pattern. Impulsive rapists rarely exhibit paraphilias. Battered spouses and beaten prostitutes may be victims in previous "assaults". This violence is distinguishable from sadism in that its use is a means rather than an end. The impulsive rapist will also participate in gang rapes and may rape if the opportunity presents while committing another crime.

The ritualistic rapist is, by comparison, an intelligent calculator with a multidimensional and complex fantasy life including multiple paraphilias. His motivation also is power, anger or a combination. Ritualistic rapists may have self images that range from inadequate to god-like and the relational fantasy they seek to realize with their victims will cover the spectrum from master-slave to quasi-consensual. His crime behavior is designed for his psychosexual gratification with fairly specific, for him, victim types in situations he will contrive reflecting anything from captivity to "romance".

The ritualistic rapist is acting out a "script" from his fantasy and may be verbal during his crime as a result. Sexual behavior will vary from a sort of "criminal foreplay" to violent, humiliating atrocity.

As the label suggests, the ritualistic rapist may "rehearse" with objects and pornography reflecting his paraphilias, with "compliant" partners such as wives, girlfriends and prostitutes and even with himself. Within the category of ritualistic rapists are sexual sadists and child molesters. The pain and suffering of the victim are psychosexual gratifications for the sadist as distinct from mere means of control.

When a ritualistic rapist has a criminal history it can reflect an escalating fantasy based behavior from as early as the teens and may include obscene phone calls, breaking and entering and burglary. The Board weighs criminal history carefully for this reason as well as the possibility that prosecutorial charging standards have changed over the years. Sexually motivated crimes and multiple rapes have been dismissed in exchange for pleas to robbery or kidnapping, for example. A legacy of considering crime only as its necessary elements of proof for conviction is a result.

The Board is trying to deduce who actually is before us from what he has done. This is the necessary preliminary if we are to determine whether he has become critically different, i.e., rehabilitated.

The Behavioral Sciences Unit of the FBI and, now retired agents, Roy Hazlewood and John Douglas, with others, have identified six rape typologies which the Board considers helpful in our deliberations.

(1) *Power Reassurance Rapist* – highly ritualistic, driven by a fantasy relational situation component of "romance" or quasi-domestic and usually the least violent as not actually wanting to "hurt" someone. They do not "like" what they are doing and have no initial intent to punish or degrade, but this may escalate. This rapist may pre-select his usually same-age victim by observation including window peeping. He will surprise his victim in her home when she is alone or with small children. He may have a weapon to persuade compliance or rely on the victim's fear for the child's safety to obtain compliance. He wants to realize his fantasy of consent and his motivation or drive is to reassure himself of his "masculinity".

(2) *Power Assertive Rapist* – This is the "date" or spousal rapist who will also attack strangers. He feels he is expressing masculinity and will use a moderate level of force and a "con" approach usually away from the same-age victim's home or work. He uses his fists rather than other weapons and fantasy plays less of an overt role in his attacks than those of the power reassurance rapist. He will also differ from the power reassurance rapist by projecting a stereotypical "man's man" image.

(3) *Anger Retaliatory Rapist* – This rapist openly hates women as a group and though he may idealize his mother will speak of women in a degrading and demeaning way in everyday conversation. This and his explosive temper may account for what is often a history of multiple marriages. He attacks same age or older women as victims of opportunity with a "blitz" of immediate and brutal force. Highly impulsive, this rapist is apparently seeking to punish any woman for perceived wrongs he has suffered from their gender. His obvious lack of social skills is aggravated by alcohol abuse and he may be "triggered" by anything from a perceived lack of deference from a woman other even than the eventual victim to a news article about a successful woman athlete.

(4) *Anger Excitation Rapist* – This most violent, least common of the four primary typologies is a sadist excited by the suffering of his victim. Fantasy for this multi-paraphiliac plays a major role in his extremely ritualistic crimes. Personality inventories may show him as anti-social, paranoid and/or narcissistic.

The two remaining impulsive typologies are (5) the opportunistic rapist and (6) the gang rapist. None of these rapists wears his label on his forehead, they reveal themselves in their behavior.

These behaviors are dynamic in that the offender learns from experience and may escalate; thus the typologies are not regarded as mutually exclusive and absolute. More important for the Board than labeling an offender is the use of structured analysis in evaluating that offender's individual crime behavior. Appraisal of actual change and assessment of future public safety risk is your Board's objective.

Confrontation Strategies

It is perhaps appropriate to add a corollary to this topic.

FBI studies of resistance and the force used show no relationship and also no relationship between resistance or the presence of a weapon and injury suffered. Resistance does correlate to the offender remaining twice as long.

Statistically reliable indicators that force will escalate include; (A) Victim being transported in a vehicle, (B) Attacker makes no attempt to reassure and (C) Attacker makes no quasi-negotiational statements..."Do what I say and I won't hurt you".

Advice can be exactly wrong for a particular type of attacker and thus from all of the foregoing three things should be known before presuming to advise a potential victim how to respond to an attack:

1. What is the time and location of the attack?
2. What is the personality and capability of the potential victim?
3. What is the type and motivation of the attacker?

For victim/survivors a lingering part of the horror is the self-blame one is all too often left with. "Why me?" is a sad post-script of attack. An answer is that he did not pick you, he picked for him.

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Murder and Assault Typologies

Board analysis of murder/assault behavior proceeds in a manner similar to our consideration of rape behaviors. There is, of course, frequent overlap and it is not intended to suggest neatly discrete behavioral categories.

Determining the offender's perspective is critical to our establishment of a baseline in evaluating whether there has been an actual interim change. Violent criminals are responsible for their acts. Those under our jurisdiction interpreted situations fearfully, angrily or hatefully and then they acted violently as a result.

Some theorists of criminal violence define such behavior as unconscious, irrational, explosive and even unintended so there is no space left for a decision to act or not to act. Such a theorist may argue in Court, for example, that someone who has admitted to a violent crime, particularly one the theorist judges to be "meaningless", is not responsible for the crime because such violence, in itself, demonstrates mental illness.

Such an argument seems to be based on the assumption that unless violent criminals think like the theorist their acts are ipso facto devoid of thought. Some tension in the proof process can result because guilt requires intent. By plea or trial those under Board jurisdiction have intended their acts and are considered accordingly.

An offender first assesses his victim's attitude through his own lens, confirming what that prospective victim's attitude means from the offender's own experience

and internalized attitudes and then the offender decides whether a violent response is warranted. Not restrained by judgement, the offender attacks.

It is fundamental in Law that...."premeditation may be only a moment"....and common sense confirms that soldiers, athletes and even ordinary drivers make split second decisions all the time that require consideration of numbers of dynamic variables. These reactive behaviors are learned.

Inmates spend much time after their act trying to justify their behavior, even to themselves. Minimization of one's culpability after a bad act is the most natural of human responses and concomitant with that response by those under Board jurisdiction is an effort to dehumanize the victim.

The expression of that dehumanization by the inmate or its deduction by the Board from the offender's objective behavior can be considered in one of four broad violent response categories:

1. *Physically defensive* – the offender maintains that he himself is non-violent and his own fear was motivation for his attack. This may also include fear of discovery.
2. *Frustrative* – victim is or was resisting offender's effort and offender's anger is the motivation for his attack.
3. *Malign* – victim is scornful ("disrespectful") or does or may do bad things and thus is manifestly evil and offender's hatred is the motivation for his attack.
4. *Frustrative-Malign* – victim's resistance or insistence means they are evil and the offender's anger and hatred motivate his attack.

It is important here to emphasize again that the offender's perspective and attitudes are sought to be identified by the Board however consciously the inmate may now comprehend them.

An offender's failure to consider consequences will lead him into situations in which he reacts violently. The robber who beats a clerk to death says without irony, "he had a tire iron and was resisting so I 'fought' with him", a rapist says, "I was going to rob them and the rape 'happened'"; words almost exactly those of another rapist who made a home invasion intending, he says, a burglary. His rape "occurred". Multiple gun-shots have been claimed as accidental or self-defense.

Murderers regularly claim their victim did some, usually unwitnessed, evil, i.e., selling drugs to children, raping or abusing someone, usually a child or woman. Not infrequently, killers put themselves on the same level with pursuing law enforcement officers; "it was him or me", whether overtly expressed or not, as self-justification for homicidal resistance to arrest.

Use of drugs/alcohol as precursors to involvement in dangerous situations is considered carefully. The Board does not automatically consider such influences as mitigating. Voluntary impairment of potential restraining judgement does not excuse violence.

As with rape analysis, the Board considers crime behavior in four phases: (1) antecedent behavior, (2) victim selection, (3) actual commission and (4) post-crime behavior. A further sub-consideration is the extent the violence was reactive or instrumental.

There is no present formula for the certain calculation of future risk for any individual. Current psychological instruments and empirical indicators will be addressed separately. Your Board's objective is the development of systematic scientific appreciations of past behavior and current performance as predictors of future public safety risk.

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Inmate Programming

Inmates under Board jurisdiction may prepare for eventual parole by remaining infraction free. These inmates are expected to "program" regularly as well.

Availability of particular programs will vary from institution to institution over time based on funding and other considerations including the inmate's time structure. To approximate the SRA determinate structure, ISRB inmates have anticipated dates for a .100 or parolability hearing 120 days prior to their Parole Eligibility Review date (PERD).

ISRB inmates are eligible for 1/3 "good time" so the PERD will be 2/3 of any sentence term established. For example, a 60 month term would establish a PERD 40 months on and the inmate would be seen 120 days (4 months) prior to the PERD or 36 months into the 60 month term. "Good time" is a control tool for management within the institution and some current determinate SRA sentences have a 15% "good time" eligibility in contrast to the ISRB sentences. Inmates are penalized blocks of "good time" depending on their institutional behavior.

Initially the sentencing Judge or the Board established minimum terms based upon the proportionality decreed by the legislature and the aggravating/mitigating factors exemplified in the SRA. ISRB offenders must earn the privilege of parole. Release is automatic for SRA offenders.

Subsequent ISRB term determinations are based, at hearings, upon assessments of rehabilitation and fitness to return to the community and other factors including prospects of complying with conditions and accepting supervision.

Parole is a right of the community to monitored transition of offenders who may earn their full freedom after 36 months of supervision in the community.

The Board's overriding consideration is the safety of the public. An inmate unable or unwilling to discipline himself within the institution is a poor prospect for the self-governance required of a parolee.

A factor when setting the new minimum term is an inmate's prospects for completion of recommended programming within that term.

Ironically, for a significant number of inmates, prison is the first setting in which they will focus on education or exhibit a grasp of the effects of their substance

abuse on their own and their victim's lives. Obtaining a GED (General Equivalency Diploma) and enrolling in a chemical dependency course are, almost universally, first steps to rehabilitation. Some pick up employment skills and training in prison industries and/or pursue degrees via correspondence courses.

Investment in these programs by both the public and the inmate is a presumably significant factor in the reduction of recidivism. For your Board, whole-hearted involvement in such programs by the inmate is a first step to the maturity that "rehabilitation" signifies.

Regular employment within the institution in anything from the inmate kitchen to yard crew is another form of programming in which an inmate can demonstrate responsibility. For some inmates money management is another course available for transitioning into the community as a "whole person".

A number of Adult Corrections Programs designed to address criminogenic needs are available in Washington State. Such courses as the Victim Awareness Education Program (VAEP), Relapse Education Program (REP), Transition and Relapse Prevention (TARP) and Moral Reconciliation Therapy (MRT) and Anger/Stress Management are multi-week groups requiring trained facilitators and standards of performance for successful completion.

These programs fall into the general category of "cognitive behavioral" courses designed to help a willing and cooperative participant to recognize risk behaviors and develop empathy. Many offenders do not actually believe they did anything wrong. Common rationales include, "everybody is more or less criminal, I just got caught" and "I only did what I had to."

The Sex Offender Treatment Program (SOTP) at Twin Rivers is one of the more extensive programs and through individual and group counseling and such techniques as covert scripts the inmate discovers his "deviant cycle" and is taught means with which to interrupt it. Many sex offenders will not acknowledge there is something "wrong" with them.

The Washington State Institute for Public Policy publishes a review of such programs here and in the rest of the country and Canada and notes a lack of rigorous evaluation of these programs anywhere. Some of these interventions may be working and some may be absorbing tax dollars better directed elsewhere in corrections. Even the best programs seem to show only relatively modest success in demonstrating a reduction in recidivism rates according to the institute.

For the Board, mere completion of a list of these courses does not demonstrate acceptance and "internalization". It is a factor which can show effort, but rehabilitation depends upon a number of factors and assessments.

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Risk Assessment Instruments

Research has established a consensus of opinion identifying some predictors of criminal conduct such as antisocial attitudes, associates and personality, histories of antisocial and problematic behavior and difficulties at home, work and leisure. Class

origins and personal distress and basic temperament are also considered minor risk factors by research theorists. Prediction research suggests that risk increases with the number and variety of risk factors present.

Theorists distinguish static from dynamic risk factors. A static risk factor is history and unchangeable, while dynamic factors are prospective and subject to influence and change. Criminal records within the family, juvenile and adult criminal history, parental difficulties in youth are fixed or static factors while education, social structure and substance abuse are among the dynamic factors presumably subject to change.

Instrument design requires a selection and quantification of risk factors. Canadians Andrews and Bonta developed the Level of Services Inventory – Revised (LSI-R) over the past 20 years. This is a quantitative survey of attributes of offenders and their situations relevant to level of service decisions. (Originally level of supervision...).

54 central questions currently comprise the LSI-R and the interviewer may vary supporting questions as necessary in order to make them comprehensible or to maintain rapport with the subject:

- "How do you do in your job?"; "Do you get along well with your co-workers?"; "Have you been denied credit because of poor credit rating?"; "Are you sexually dissatisfied?"; "Do you have communication problems?"; "How do you spend your free time?"; "Do you have a lot of friends?"; "Have you ever had an alcohol problem?"; "Would you like to lead a life without crime?"

The 54 questions are grouped into sub-components as follows:

Criminal History (10) Leisure/Recreation (2)

Education/Employment (10) Companions (5)

Financial (2) Alcohol/Drug Problems (9)

Family /Marital (4) Emotional/Personal (5)

Accommodation (3) Attitudes/Orientation (4)

The assessor is urged, where possible, to confirm the responses with file review.

The designers urge that the instrument is to assist in identifying the dynamic areas of risk/need that may be addressed by programming. According to the authors the LSI-R provides a convenient record of factors to be reviewed prior to case classification and is useful as a quantitative decision aid and assists in the appropriate allocation of supervisory resources.

Andrews and Bonta stress the LSI-R is not intended to be the only instrument for assessment of an individual and is not a substitute for sound judgement using various sources of information. Scores are converted into odds of re-offense within a period; for example, a score in the upper 20's or low 30's would be categorized as a low-moderate risk/needs case with a 48.1% chance of re-offense within one year. This assessment guides the intensity of supervision and the factors to target for change.

The score is expected to change over time as the dynamic factors are influenced during supervision. The nature of the possible re-offense is not indicated.

Some of the other statistical assessment instruments available for the Board include the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR); the Minnesota Sex Offender Screening Tool (MSOST) and the Violence Risk Appraisal Guide (VRAG). Some of these are believed to suggest the odds for a particular type of re-offense over periods out to several years.

This list is not exhaustive, but the common features of these instruments are suggested by the titles and they generally correspond to the LSI-R design and the cautions voiced by its makers. These are aids and not absolute determiners of decisions.

For the Board, these instruments may provide, at the very least, a reduction in assessor bias in data presented for our decision process. The fact remains that there is no present formula for the certain calculation of future risk for any individual. Personality inventories and aptitude assessments are separately considered.

The Board recognizes these instruments are not individually precise due both to the makers' cautions and the use of vague terms like "moderately dangerous" over "approximate" periods.

Notable to the Board, considering the nature of the offenses of those under our jurisdiction, is a discovery of these researches suggesting a significant subgroup of offenders with very high risks of violent recidivism who are, nonetheless, very well behaved within the institution.

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Psychological Aids

A thorough clinical work-up assists the Board in our own interview with the inmate. Psychologists' disclaimers note that the prison environment is not conducive to either full candor or the related premise that the interviewee is actually seeking help.

The initial appraisal of the subject's appearance and demeanor is followed by noting changes observed as the assessment progresses.

An acceptable psychological opinion must include some objective measures of reading and comprehension as well as IQ assessment. Cooperation and ability are significant factors in the process.

A number of personality inventories are presently available. One of the oldest, the Minnesota Multiphasic Personality Inventory (MMPI, superseded in 1992 by the MMPI-2) is an "objective" instrument comprised now of over 550 true/false questions estimated to require about 90 minutes to answer, 15 minutes to hand score and about 30 minutes for an experienced interpreter to prepare a profile opinion.

Originally developed in the early 1940's, the MMPI items were grouped in a series of scales such as Hypochondriasis, Depression, Psychopathic Deviate, Social

Introversion, etc.. The theoretical basis was to compare about four dozen diagnosed patients with a thousand or so "normal" Minnesotans as a diagnostic aid.

The theoretical basis was never validated possibly for reasons including lack of temporal reliability; the same people may score significantly differently within a period as short as two weeks. A number of "validity" checks are incorporated so an interpreter is supposed to be able to determine if a subject is "faking good", "faking bad" or answering randomly. Also recognized is the ability of a subject to "learn" the test and test taking. The questions were designed to lack "content validity" in order to conceal what was actually being assessed.

The instrument remains in use as a guide to appraising a personality. The ten scales are now simply numbered possibly to avoid simplistic diagnostic implications. Interestingly, some theorists now consider the validity scales especially important in determining a need or desire for therapy. Inferences are based on elevated scales.

Another inventory is the Personality Assessment Inventory (PAI), which was designed to provide measures of constructs that are central in treatment planning, implementation, and evaluation. The 344 items in this "objective" instrument comprise 22 non-overlapping full scales: 4 validity, e.g. Inconsistency, negative impression; 11 clinical, e.g. somatic complaints, anti-social features, alcohol problems; 5 treatment, e.g. aggression, stress, treatment rejection; and 2 interpersonal, dominance and warmth. Other inventories include the Millon Clinical Multiaxial Inventory – III (MCMI-III) and the State Trait Anger Expression Inventory – 2 (STAXI-2).

The Psychopathy Check List – Revised (PCL-R) is an inventory for the presence of psychopathy, which must be considered especially cautiously as the condition is presently deemed untreatable and qualitatively distinct from normal personality functioning. This instrument is comprised of 20 items, e.g. grandiose sense of self-worth, lack of remorse or guilt, shallow affect, etc.

"Projective" tests, like the Rorschach, are occasionally included in an assessment. Developed in the late '30's, the Rorschach is several cards, some black and white and some colored. The subject is encouraged to discuss what they "see" thus revealing covert, latent or unconscious aspects of personality. Expertise is required to avoid mistaking a compelling narrative for established truth.

The foregoing are some examples of instruments in use under current protocol. Risk assessment instruments, otherwise summarized, will also form part of the support for a proper modern psychological opinion. There is some empirical basis for these latter instruments. The Diagnostic and Statistical Manual IV (DSM IV) provides a common lexicon of symptoms.

The Board accepts that there are no precise and reliable data about the structures and functions of the mind and that deducing particulars about one individual from all that are members of a group is not scientifically defensible. Psychological tests were designed primarily for diagnosis and treatment planning purposes and a prison setting is not ideal for self-disclosure or psychological testing.

Psychological appraisers are asked for assessments of future risk and for appropriate conditions should the subject be returned to the community. The Board considers these opinions as hypotheses only. The psychological evaluation is one of several pieces of information upon which the decision rests. Mental states are not

precise, discrete or static and a "depressed" person may have nothing but their depression in common with another "depressed" person.

By law your Board is delegated the authority and responsibility to make the parole decision and acknowledges the historic tension between the psychological process and the needs of the law.

JLA:rls 8/2/00

.....the parole release decision....depends on an amalgam of elements, some of which are factual, but many of which are purely subjective appraisals by the Board Members based upon their experiences with the difficult and sensitive task of evaluating the advisability of parole release....The parole determination....may be made for a variety of reasons and often involves no more than informed predictions as to what would best serve correctional purposes or the safety and welfare of the inmate. The decision turns on a discretionary assessment of a multiplicity of imponderables, entailing primarily what a man is and what he may become rather than simply what he has done.

Greenholtz v Inmates of the Nebraska Penal and Correctional Complex

442 U.S. 1, 9-10, 99S. Ct. 2100, 60 L Ed 2d 668 (1979)